



A handwritten signature in black ink, appearing to read "Michael S. McManus".

Hon. Michael S. McManus
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re)	Case No. 08-51861
)	
SANDY KANAEOLO,)	Chapter 13
)	
Debtor.)	Date: September 4, 2009
)	Time: 1:30 p.m.
)	
)	

MEMORANDUM

Movant America's Servicing Company seeks relief from the automatic stay with respect to real property located in Sun Valley, Nevada.

Neither the debtor nor the trustee have filed written opposition within 15 days after service of the motion as required by Local Bankruptcy Rule 9014(d)(1). This is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo),

1 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the
2 above-mentioned parties in interest are entered and the matter
3 will be resolved without oral argument.

4 The motion will be granted pursuant to 11 U.S.C. § 362(d)(1)
5 to permit the movant to conduct a nonjudicial foreclosure sale
6 and to obtain possession of the subject property following sale.

7 The movant holds a claim secured by a deed of trust that
8 encumbers the debtor's real property. The plan requires that the
9 post-petition note installments be paid directly to the movant by
10 the debtor. In breach of the plan, the debtor failed to pay
11 approximately three monthly installments to the movant. This is
12 cause to terminate the automatic stay. See Ellis v. Parr (In re
13 Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

14 The loan documentation contains an attorney's fee provision
15 and the movant is an over-secured creditor. The motion demands
16 payment of fees and costs. The court concludes that a similarly
17 situated creditor would have filed this motion. Under these
18 circumstances, the movant is entitled to recover reasonable fees
19 and costs incurred in connection with prosecuting this motion.

20 See 11 U.S.C. § 506(b). See also Kord Enterprises II v.
21 California Commerce Bank (In re Kord Enterprises II), 139 F.3d
22 684, 689 (9th Cir. 1998).

23 Therefore, the movant shall file and serve a separate motion
24 seeking an award of fees and costs. The motion for fees and
25 costs must be filed and served no later than 14 days after the
26 conclusion of the hearing on the underlying motion. If not filed
27 and served within this deadline, or if the movant does not intend
28 to seek fees and costs, the court denies all fees and costs. The

1 order granting the underlying motion shall provide that fees and
2 costs are denied. If denied, the movant and its agents are
3 barred in all events and circumstances, in connection with this
4 bankruptcy case or otherwise, from recovering any fees and costs
5 incurred in connection with the prosecution of the motion.

6 If a motion for fees and costs is filed, it shall be set for
7 hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2).
8 It shall be served on the debtor, the debtor's attorney, the
9 trustee, and the United States Trustee. Any motion shall be
10 supported by a declaration explaining the work performed in
11 connection with the motion, the name of the person performing the
12 services and a brief description of that person's relevant
13 professional background, the amount of time billed for the work,
14 the rate charged, and the costs incurred. If fees or costs are
15 being shared, split, or otherwise paid to any person who is not a
16 member, partner, or regular associate of counsel of record for
17 the movant, the declaration shall identify those person(s) and
18 disclose the terms of the arrangement with them.

19 Alternatively, if the debtor will stipulate to an award of
20 fees and costs not to exceed \$750, the court will award such
21 amount. The stipulation of the debtor may be indicated by the
22 debtor's signature, or the debtor's attorney's signature, on the
23 order granting the motion and providing for an award of \$750.

24 The 10-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be
25 waived.

26 Counsel for the movant shall lodge a conforming order.
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